

Application No.: 10/638,173
Filing Date: August 6, 2003

REMARKS

Claims 60, 65-71, 76-83, 88-96, 101-117 and 126-133 are currently pending and presented for examination. Claims 1-59, 61-64, 72-75, 84-87, 97-100 and 118-125 are canceled. Applicants reserve the right to pursue the subject matter of any or all of these canceled claims in one or more continuing applications.

Claims 60, 65, 66, 71, 76, 77, 83, 88, 89, 94, 101, 107 and 109 are currently amended. Support for the amendments to these claims can be found throughout the claims and specification as originally filed. For example, support for the amendments to independent claims 60, 71, 83 and 94 can be found at page 12, line 34 to page 13, line 18 and elsewhere throughout the specification as originally filed. Additional support for the amendments to independent claims 83 and 94 can be found at page 39, lines 15-16 and at page 28, lines 1-3, respectively, and elsewhere throughout the specification as originally filed. Support for the amendments to dependent claims 65, 76, 88 and 101 can be found at page 10, lines 1-24 and elsewhere throughout the specification as originally filed. Support of the amendments to dependent claims 66, 77, 89, 107 and 109 can be found at page 28, lines 1-3 and elsewhere throughout the specification as originally filed. Accordingly, no new matter is added by way of these amendments.

Claims 126-133 are new. Support for each of these new claims can be found in the claims and specification as originally filed. For example, support for claims 126, 128, 130 and 133 can be found at page 10, lines 13-14 and elsewhere throughout the specification as originally filed. Support for claims 127, 129, 131 and 132 can be found at page 30, lines 18-19 and elsewhere throughout the specification as originally filed. As such, new claims 126-133 do not constitute new matter.

Rejection of claims 60-125 under 35 U.S.C. § 103(a)

The Examiner rejects claims 60-125 as allegedly obvious over U.S. Patent No. 6,327,410 (Walt et al.) in view of U.S. Patent No. 6,323,066 (Felder et al.). In particular, the Examiner asserts that Walt et al. disclose the subject matter of claims 60-125 other than a gasket separating assay locations. The Examiner asserts, however, that this deficiency is remedied by Felder et al., which allegedly discloses a gasket separating assay locations on an array. The Examiner then

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contends that a skilled artisan would have found it obvious to combine the disclosure of Walt et al. with that of Felder et al. so as to arrive at the subject matter of the above-recited claims because such combination would provide the spatial segregation of assay locations allegedly desired by Walt et al. and also produce the "expected benefit of providing for fluidically controlled multi-sample testing without cross contamination between adjacent regions."

Applicants do not agree that any of claims 60-125 were obvious prior to the instant amendments, however, in order to expeditiously bring this application to allowance, Applicants have amended each of the independent claims to recite, in relevant part, "a second population of microspheres comprising blank microspheres." Applicants submit that the art of record does not disclose or suggest a substrate comprising first and second assay locations and first and second populations of microspheres in accordance with the manner in which they are set forth in the currently pending independent claims. As such, Applicants submit that each of the currently pending claims is patentable.

In view of the foregoing remarks and amendments, Applicants respectfully request that the Examiner withdraw the rejection of claims 60, 65-71, 76-83, 88-96 and 101-117 as obvious under 35 U.S.C. § 103(a). The rejection of claims 61-64, 72-75, 84-87, 97-100 and 118-125 is moot in view of their cancellation.

Claims 109-111

With respect to claims 109-111, the Examiner asserts that sequencing does not further define a method for making an array (see the paragraph bridging pages 5 and 6 of the instant Office Action). Applicants do not agree. In particular, in many instances it is important to determine the identity of the bioactive agent present at one or more positions on the array during the manufacturing process. Sequencing is one way to make this determination. As such, sequencing one or more bioactive agents does further define a method for making an array.

In view of the foregoing remarks, Applicants respectfully submit that claims 109-111 properly depend from claim 94.

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No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION


Applicants believe that all outstanding issues in this case have been resolved and that the present claims are in condition for allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is invited to contact the undersigned at the telephone number provided below in order to expedite the resolution of such issues.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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